

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7586 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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MOHAMMED RAFIQ @ RAFIQ

ABDULREHMAN MEMON

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

MS.SIDDHI TALATI, AGP.for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the detention order dated 5.6.1998 passed by the Police Commissioner, Ahmedabad under section 3(2) of the Prevention of Antisocial Activities Act,1985 (for short 'PASA') is under challenge with a prayer that the said order be quashed and set aside.

The brief facts are that the Detaining Authority in the grounds of detention considered two cases registered against the petitioner under Bombay Prohibition Act. He also considered statements of two confidential witnesses who requested that on account of fear of the petitioner their names and addresses be not disclosed. Upon considering the material on record, the

Detaining Authority was subjectively satisfied that the petitioner is a bootlegger and his activities are prejudicial for maintenance of public order. It is thus, this order is under challenge in this writ petition on the sole ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. No other ground has been pressed in this writ petition.

Upon consideration of two registered cases under Bombay Prohibition Act, it is clear that the petitioner is a bootlegger. In the first case 924 bottles of foreign liquor worth Rs.1,10,880/- were recovered along with the Scooter and Minitruck. In the second incident 12 bottles of foreign liquor along with Auto-rickshaw were recovered from the petitioner. Thus, the petitioner is a bootlegger within the meaning of section 2(b) of PASA Act.

Section 3(1) of the PASA Act prescribes that the State Government can detain any person if it is satisfied that his activities are prejudicial for maintenance of public order. Section 3(4) read with explanation to sub-clause (4) further makes it clear that a bootlegger cannot be preventively detained simply on the ground of his bootlegging activities. Unless the activities connected with bootlegging are found to be prejudicial for maintenance of public order he cannot be preventively detained. If this flows from the PASA Act itself then there is no reason for citing number of authorities to burden this judgment. However, on this point the Apex Court in Piyush Kantilal Mehta Vs. Commissioner of Police, AIR 1989 SC Pg.491 can be referred which lays down that mere bootlegging activity is not enough for keeping a person under preventive detention and unless his activities are prejudicial for maintenance of public order he cannot be preventively detained.

The registration of two cases under Bombay Prohibition Act, cannot be pressed in service for reaching subjective satisfaction that activities of the petitioner in these two incidents were prejudicial for maintenance of public order. There is no averment in the grounds of detention that when huge quantity of foreign liquor along with Minitruck etc. was recovered from the petitioner he created obstruction to the search and seizure or created any situation at that time which was prejudicial for maintenance of public order. Similar is the case with the second registered incident. Consequently, these two incidents are not enough for reaching subjective satisfaction that the activities of

the petitioner were prejudicial for maintenance of public order.

Then remains two statements of confidential witnesses. The first witness stated about the incident dated 6.5.1998. According to this statement it seems that the petitioner was under impression that the witness was collecting information against the petitioner to be passed on to the police. He became annoyed with the activities of the petitioner. The witness was openly beaten and a knife was touched on his person. There was no allegation that any injury by knife was caused to the witness. The witness raised alarm thereupon people of the locality gathered. The petitioner became excited. He ran towards public with open knife. An atmosphere of fear was created. Traffic was disturbed. Since no injury was caused, on the face value of the statement either to the witness or to any of the member of the public it can hardly be said that a situation of danger to life was created at that particular time by the so called activity of the petitioner.

So far as the second incident is concerned it was dated 12.5.1998 at 7.00 p.m. The petitioner was unloading foreign liquor kept in boxes from Truck near Mosque. The witness objected to such activity. Thereupon the petitioner became excited. He dragged the witness with the help of his friends and beat him. Knife was shown to the witness. People gathered at the spot. The petitioner rushed towards them with open knife. Again an atmosphere of fear was created in the area.

The learned Assistant Government Pleader contended that since this activity was near Mosque which is a public place it can be said that this activity was prejudicial for maintenance of public order. For appreciating this contention it has to be kept in mind whether Mosque itself is a public place or land surrounding it though it may not belong to the mosque and what should be the area beyond the property held and possessed by the Mosque which can be considered to be a public place. There is no averment that there was any attempt by the petitioner to store wine in the Mosque or in the premises of the Mosque. Secondly, the activity could not be prejudicial to any member belonging to Muslim community. Storing of foreign liquor at a place near Mosque by itself does not amount to prejudicial activity which was prejudicial for maintenance of public order. In the second incident no person was injured neither the witness nor any member of the public. As such simply mere show of knife either to the witness or

to the public cannot be said to have created a situation prejudicial for maintenance of public order. In M.J.Shaikh Vs.M.M.Mehta, Commissioner of Plice, 1995(2) GLR 1268, where the petitioner had shown revolver to the confidential witness and also ran, pointing out revolver, towards members of public, the Apex Court did not consider such activity amounting to disturbance of public order or distrubing even tempo of the life of the locality. Thus, if the petitioner had shown knife to the witness and ran towards members of the public showing knife to them it cannot be said that his activity was prejudicial for maintenance of public order. Since the basic condition for detention order viz. activities being prejudicial for maintenance of public order is lacking in the instant cas, the impugned order of detention becomes illegal and cannot be sustained. As such the writ petition succeeds and is hereby allowed. The impugned order of detention dated 5.6.1998 contained in Annexure "A" to the writ petition is hereby quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt